

OLC 78-2427

29 June 1978

OLC RECORD COPY

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STAT MEMORANDUM FOR: [REDACTED]
Office of General Counsel

STAT FROM: [REDACTED]
Assistant Legislative Counsel

SUBJECT: S. 2467 and H.R. 8410, Bills to Amend the National Labor Relations Act

1. Both of the subject bills listed above would amend the 1935 National Labor Relations (Wagner) Act (NLRA) 29 U.S.C. 151 et seq. S. 2467 was reported in the Senate on 31 January 1978 by the Human Resources Committee (S. Rept. No. 95-628). H.R. 8410 was reported in the House from the Education and Labor Committee on 27 September 1977 (H. Rept. No. 95-637). The bill passed the House on 6 October 1977 and was subsequently sent to the Senate where it was referred to the Senate Committee on Human Resources on 7 October. Human Resources Committee reported the bill on 2 May 1978 (S. Rept. 95-776). On 16 May the Senate opened what portends to be a protracted struggle over passage of the legislation. Opponents led by Orrin G. Hatch (R., Utah) succeeded in filibustering to the point where after numerous failures to invoke cloture and break filibuster, H.R. 8410 was sent back to the Senate Human Resources Committee for further consideration. Under the recommittal motion, the bill would not come back to the Senate floor before 15 July.

2. This office has been of late inundated with amendments to both bills. As of 17 May, one day after the Senate opened debate on H.R. 8410, opponents of the legislation had already introduced more than 500 amendments to call up if cloture was invoked. Such a flood of amendments, commonly known as a "filibuster by amendment," has been unleashed by opponents to the bill who hope to delay a conference with the House so long that the Senate would not have time to clear the conference report before adjournment.

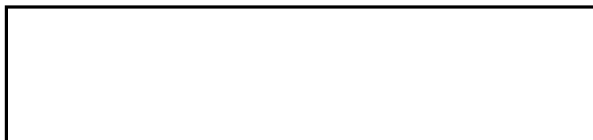
3. This office has taken a close look at the National Labor Relations Act and concludes that the Agency by definition is excluded from coverage thereunder. In paragraph 2(3) of the 1935 NLRA (29 U.S.C. 152(2)), the term "employer" is defined as not including "the United States ...". Further, paragraph 2(3) (29 U.S.C. 152(3)) defines "employee" as not including "any individual employed ... by any other person who is not an employer as herein defined." Since the United States Government is not an employer by definition, employees of the U.S. Government are by definition not employees for purposes of the National Labor Relations Act and are thereby excluded from coverage thereunder. Neither S. 2467 nor H.R. 8410 as reported attempt to disturb by amendment section 2 (definitions) of the NLRA. Clearly, then, Federal employees continue to be exempted from the Act's coverage.

4. However, in reviewing some of the over 500 amendments to the bills, it was discovered that Senator Strom Thurmond (R., S. C.) on 8 May and on 15 May introduced two separate amendments (attached) which appear to be aimed at increasing the scope of the NLRA by amending section 2 thereof to make the United States an "employer" and Federal employees "employees" for purposes of the NLRA. To date, this office has uncovered no similar amendment to S. 2467.

5. While the Thurmond amendments may be merely tactical, viz., two more introduced by opponents to allow "filibuster by amendment" if cloture is invoked after 15 July, they would nonetheless substantively impact negatively on the U.S. Government and derivatively on the Agency. Consequently, this office will continue to review the amendments as they arrive and follow the legislative process with regard to both bills.

6. This memorandum will serve to notify you of the fact that that process is being carried out in OLC. I would ask that your office do two things with regard to the Labor Reform bills: first, please review the NLRA with a view to confirming the conclusion arrived at herein with regard to the current scope of the NLRA; secondly, please notify this office if you wish to receive copies of any amendments as they arrive.

7. I would appreciate your written response to the requests stated in paragraph 6 of this memorandum as soon as possible but no later than COB Friday, 7 July 1978. I thank you in advance for your assistance in this regard.



STAT

Attachments

Distribution:

Orig - Addressee, w/atts

1 - OLC Subject, w/atts

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STAT OLC ☐ sm (29 Jun 78)

Purpose:

Calendar No. 574

Amdt. No. 1976

95TH CONGRESS
2D SESSION

S. 2467

IN THE SENATE OF THE UNITED STATES

MAY 8 (legislative day, APRIL 24), 1978

Ordered to lie on the table and to be printed

AMENDMENT

Intended to be proposed by Mr. THURMOND to S. 2467, a bill to amend the National Labor Relations Act to strengthen the remedies and expedite the procedures under such Act, viz: On page 1, line 10, add the following new section 2 to the bill and renumber all other sections accordingly:

1 SEC. 2. Delete section 2 (2) of the Act and substitute
2 therefor the following:

3 “(2) The term ‘employer’ includes any association or
4 corporation, but shall not include single proprietorships or
5 partnerships, or any State or political subdivision thereof
6 which promulgates rules for its employees relating to col-
7 lective bargaining, or any person subject to the Railway
8 Labor Act, as amended from time to time.”.

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Purpose:

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Calendar No. 574

To increase the scope of the Act.

Amdt. No. 2096

95TH CONGRESS
2D SESSION

S. 2467

IN THE SENATE OF THE UNITED STATES

MAY 15 (legislative day, APRIL 24), 1978

Ordered to lie on the table and to be printed

AMENDMENT

Intended to be proposed by Mr. THURMOND to S. 2467, a bill to amend the National Labor Relations Act to strengthen the remedies and expedite the procedures under such Act, viz: On page 1, line 10, add the following new section 2 to the bill:

1 SEC. 2. Amend section 2 (2) of the Act to delete the
2 phrase "the United States or any wholly owned Govern-
3 ment corporation, or any Federal Reserve bank, or any
4 State or political subdivision thereof, or any corporation or
5 association operating a hospital, if no part of the net earnings
6 inures to the benefit of any private shareholder or individ-
7 ual, or" following the word "person".

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